

# Exhibit 1

**LUCAS COUNTY COMMON PLEAS COURT**

CORNER ADAMS & ERIE STREETS  
TOLEDO, OHIO 43604

**SUMMONS  
CIVIL ACTION**

**FILING TYPE:**

**OTHER TORT**

BERKSHIRE HATHAWAY HOMESTATE  
INSURANCE COMPANY  
CORPORATION SERVICE COMPANY  
50 WEST BROAD ST SUITE 1330  
COLUMBUS, OH 43215

G-4801-CI-0201702659-000  
JUDGE: LINDA J JENNINGS

You have the right to seek legal counsel. If you cannot afford a lawyer, you may contact the Legal Services of Northwest Ohio. If you do not qualify for services by the Legal Services of Northwest Ohio and do not know an attorney you may contact the Toledo Bar Association's Lawyer Referral Service (419) 242-2000.

You have been named as a defendant in a Complaint filed in this Court by the plaintiff named below. A copy of the Complaint is attached to this Summons.

You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he has no attorney of record, a copy of an answer to the complaint, within twenty-eight (28) days after you receive this Summons, exclusive of the of the day of service or to an amended complaint within the remaining response time to the complaint or 14 days, whichever period may be longer. Your answer must be filed with the Clerk of Court of Common Pleas within three (3) days after the service of a copy of the Answer on the plaintiff's attorney.

If you fail to serve and file your Answer, judgment by default will be rendered against you for the relief demanded in the Complaint.

PLAINTIFF (S)

ANTHONY HERRICK  
649 FORSYTHE ST  
TOLEDO, OH 43605

ATTORNEY FOR PLAINTIFF(S)

ROBERT A RUTTER  
ONE SUMMIT OFFICE PARK  
4700 ROCKSIDE RD STE 650  
CLEVELAND, OH 44131

BERNIE QUILTER  
CLERK OF COURTS

Date: May 12, 2017

 Clerk



**IF YOU DO NOT HIRE AN ATTORNEY  
PLEASE READ & RESPOND**

(mark one & respond)

☐

I request to be notified by email

My email address \_\_\_\_\_

**Send email to:** Lwatt@co.lucas.oh.us  
**Subject:** G-4801-CI-0201702659-000  
BERKSHIRE HATHAWAY  
HOMESTATE INSURANCE COMPANY  
**Message:** Your email address

☐

I request to be notified by regular mail  
(Clerk will forward to Court for approval)

My mailing address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Return this Form with your address to:**  
Clerk of Court  
Lucas County Common Pleas Court  
700 Adams  
Toledo, OH 43604

**OR**

**If you do NOT hire an attorney & fail to respond  
you will NOT receive notification of events related to this case**

Case Information is available Online at:  
[www.co.lucas.oh.us/Clerk](http://www.co.lucas.oh.us/Clerk)  
click on the "Dockets Online" link

*Local Rule 5.05 H. SERVICE BY CLERK'S OFFICE Once journalized, the Clerk of courts Office will transmit the entries to the email address submitted by the parties. Counsel for a party or Pro Se litigant representing themselves who do not have an email address may, by motion, request ordinary mail service of entries by the Clerk of Courts Office.*

FILED  
LUCAS COUNTY

2017 MAY 11  
IN THE COURT OF COMMON PLEAS  
LUCAS COUNTY, OHIO

ANTHONY HERRICK  
649 Forsythe Street  
Toledo, Ohio 43605

Plaintiff

vs.

BERKSHIRE HATHAWAY  
HOMESTATE INSURANCE COMPANY,  
CORPORATION SERVICE COMPANY  
50 WEST BROAD STREET SUITE 1330  
COLUMBUS, OH 43215

Defendant

CASE NO.

CI0201702659

JUDGE

Assigned to Judge Linda Jennings

**COMPLAINT**  
**(Jury Demand Endorsed Hereon)**

### GENERAL ALLEGATIONS

1. Plaintiff Anthony Herrick ("Plaintiff") owned a house located at 649 Forsythe Street, Toledo, Ohio ("Subject Property").
2. Defendant Berkshire Hathaway ("Berkshire") insured Plaintiff under policy number 02PRM024476-01 effective 1/04/16 to 1/04/17. A copy of the declarations page of the policy is attached as Exhibit 1. The policy insures the property on an ACV basis up to approximately \$200,000.
3. Based on those insurance limits Berkshire charged Mr. Herrick a premium which he paid.
4. On the evening of May 11, 2016, the Subject Property suffered a fire.
5. The interior of the home was totally destroyed rendering the house a total loss.
6. Plaintiff promptly reported the fire to Berkshire, which commenced its own investigation into the cause and origin of the fire.

7. Ultimately the cause of the fire was undetermined and unknown. Mr. Herrick had nothing to do with the fire.

8. Plaintiff fully cooperated with the claim investigation.

9. Berkshire elected to only pay Herrick approximately \$12,000 despite they calculated the ACV to be \$84,000 and the RCV to be \$152,000

**COUNT ONE**  
**Breach of Contract – Berkshire**

10. Plaintiff restates the above allegations.

11. Plaintiff had a contract with Berkshire on the day the loss occurred.

12. At all times, Plaintiff fulfilled his duties under the contract.

13. Berkshire breached the insurance contract by failing to pay Plaintiff the amount due under the insurance policy.

14. As a direct and proximate result of Berkshires breach of the insurance contract, Plaintiff has been denied the policy benefits due under the contract. As a further direct and proximate result of Berkshires breach of the insurance contract, Plaintiff has suffered other reasonably contemplated damages.

WHEREFORE, Plaintiff prays for judgment against Berkshire in an amount in excess of \$25,000 the exact amount to be determined by the trier of fact. Plaintiff also prays for interest, costs, and attorney fees as allowed by law, and such other relief as the Court, in the exercise of its equitable jurisdiction, deems proper.

Respectfully submitted,

/s/ Robert A. Rutter  
Robert A. Rutter (0081503)

Justin Rudin (0087368)  
RUTTER & RUSSIN, LLC  
One Summit Office Park, Suite 650  
4700 Rockside Road  
Cleveland, Ohio 44131  
(216) 642-1425  
bobbyrutter@OhioInsuranceLawyer.com  
jrudin@OhioInsuranceLawyer.com

**JURY DEMAND**

Plaintiff hereby request, pursuant to Civil Rule 38(B), a trial by jury of the issues of the within lawsuit.

/s/ Robert A. Rutter  
ROBERT A. RUTTER  
Attorney for Plaintiff

POLICY NUMBER: 02PRM024476-01

COMMERCIAL PROPERTY  
CPB 2060 10 13

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **OHIO CHANGES – VACANT BUILDING VALUATION LOSS CONDITION**

This endorsement modifies insurance provided under the following:

### **VACANT BUILDING PROPERTY COVERAGE FORM**

Paragraph E.6. is replaced by the following:

#### **E. LOSS CONDITIONS**

##### **6. Valuation**

We will determine the value of Covered Property in the event of loss or damage as follows:

a. At actual cash value as of the time of loss or damage, except as provided in b., c., d. and e. below.

b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement. The cost of building repairs or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property. However, the following property will be valued at the actual cash value even when attached to the building:

- (1) Awnings or floor coverings;
- (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
- (3) Outdoor equipment or furniture.

- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
- d. Glass at the cost of replacement with safety-glazing material if required by law.
- e. Tenants' Improvements and Betterments at:
  - (1) Actual cash value of the lost or damaged property if you make repairs promptly.
  - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
    - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
    - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
  - (3) Nothing if others pay for repairs or replacement.

POLICY NUMBER: 02PRM024476-01

COMMERCIAL PROPERTY  
CPD 0001 04 13**COMMERCIAL PROPERTY COVERAGE PART  
DECLARATIONS**

Agency Name: Landers Insurance LLC

Agency Number: H03660

**DESCRIPTION OF PREMISES**

Premises Number: 1

Building Number: 1

Building Description:

Address: 649 FORSYTHE ST, TOLEDO, OH 43605

Protection Class: 3

Construction: Frame/Brick Veneer

Occupancy: 1180 VACANT DWELLING - NOC

**COVERAGES PROVIDED**

Insurance at the above described premises applies only for coverages for which a limit of insurance is shown or for which an entry is made.

Coverage	Limit Of Insurance	Coinsurance	Covered Causes Of Loss	Deductible	Premium
Building	\$200,000	80%	BASIC	\$2,500	\$1,256

**OPTIONAL COVERAGES**

Coverage	Agreed Value		Replacement Cost (X)	Inflation Guard (%)
	Amount	Expiration Date		

**OPTIONAL BUSINESS INCOME COVERAGES**

Agreed Value		Monthly Limit Of Indemnity (Fraction)	Maximum Period Of Indemnity (X)	Extended Period Of Indemnity (Days)
Amount	Expiration Date			



POLICY NUMBER: 02PRM024476-01  
 ENDORSEMENT #: 3

ILB 0002 06 12

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## GENERAL CHANGE ENDORSEMENT

<b>COMPANY INFORMATION</b>	
Berkshire Hathaway Homestate Insurance Company 1314 Douglas St Omaha, NE 68102	
<b>AGENCY INFORMATION</b>	
Landers Insurance LLC 1424 Sherman Ave Ste 400 Couer d Alene, ID 83814	
<b>NAMED INSURED:</b>	ANTHONY HERRICK
<b>MAILING ADDRESS:</b>	649 FORSYTHE ST TOLEDO, OH 43605
<b>POLICY PERIOD:</b>	FROM 01/04/2016 12:01 A.M. TO 01/04/2017 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.
<b>ENDORSEMENT EFFECTIVE:</b>	05/25/2016 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.
<b>ENDORSEMENT PROCESSED:</b>	06/01/2016
<b>ADDITIONAL / (RETURN) PREMIUM:</b>	\$249

This endorsement changes the policy on the endorsement effective date shown above.  
 It is agreed that the policy is changed as follows:

The following endorsements and forms are modified per the attached:

CPD 0001 04/2013 COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

The following endorsements and forms are attached and become part of the policy:

CPB 2060	10/2013	OHIO CHANGES - VACANT BUILDING VALUATION LOSS CONDITION
CPM 2039	11/2009	VACANT BUILDING PROPERTY COVERAGE FORM
CPM2042	01/2009	NEWLY ACQUIRED OR CONSTRUCTED PROPERTY
CPM2049	06/2011	VANDALISM LIMITATION

The following endorsements and forms are removed from the policy:

CP 0010	06/2007	BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CPM1121	09/2012	PER BUILDING DEDUCTIBLE - NO AGGREGATE
CPM2033	12/2009	PROTECTIVE SAFEGUARDS

IN CONSIDERATION OF AN ADDITIONAL PREMIUM OF \$249, THE FOLLOWING BUILDING IS HEREBY  
 MODIFIED PER THE ATTACHED SCHEDULE.

LOC	BLDG	ADDRESS
1	1	649 FORSYTHE ST TOLEDO, OH 43605

Pro-Rata Factor: 0.614

All other terms, conditions, and agreements remain unchanged.

POLICY NUMBER: 02PRM024476-01

ILB 0002 06 12

ENDORSEMENT #: 4

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****GENERAL CHANGE ENDORSEMENT**

<b>COMPANY INFORMATION</b>	
Berkshire Hathaway Homestate Insurance Company 1314 Douglas St Omaha, NE 68102	
<b>AGENCY INFORMATION</b>	
Landers Insurance LLC 1424 Sherman Ave Ste 400 Couer d Alene, ID 83814	
<b>NAMED INSURED:</b>	ANTHONY HERRICK
<b>MAILING ADDRESS:</b>	649 FORSYTHE ST TOLEDO, OH 43605
<b>POLICY PERIOD:</b>	FROM 01/04/2016 12:01 A.M. TO 01/04/2017 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.
<b>ENDORSEMENT EFFECTIVE:</b>	05/25/2016 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.
<b>ENDORSEMENT PROCESSED:</b>	06/01/2016
<b>ADDITIONAL / (RETURN) PREMIUM:</b> \$0	

This endorsement changes the policy on the endorsement effective date shown above.

It is agreed that the policy is changed as follows:

THE NAMED INSURED INFORMATION IS AMENDED TO READ AS FOLLOWS:

ANTHONY HERRICK

649 FORSYTHE ST

TOLEDO, OH 43605

BUSINESS TYPE: INDIVIDUAL

BUSINESS DESCRIPTION: VACANT DWELLING OWNER

PHONE NUMBER: (904) 548-7139

Pro-Rata Factor: 0.614

All other terms, conditions, and agreements remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

## **NEWLY ACQUIRED OR CONSTRUCTED PROPERTY**

This Endorsement modifies insurance provided under the following:  
VACANT BUILDING PROPERTY COVERAGE FORM

The Following is added to Coverage A.:

### **5. Newly Acquired or Constructed Property**

Except as otherwise provided, the following Endorsement applies to property located in or on the Building described in the Declarations.

#### **a. Buildings**

- (1) New buildings while being built on the described premises; and
- (2) Buildings you acquire at locations, other than the described premises, intended for:
  - (a) Similar use as the building described in the Declarations; or
  - (b) Use as a warehouse.

The most we will pay for loss or damage under this Endorsement is \$250,000 at each building.

#### **b. Period of Coverage**

With respect to insurance on or at each newly acquired or constructed property, coverage will end when any of the following first occurs:

- (1) This policy expires; or
- (2) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

POLICY NUMBER:02PRM02447601

COMMERCIAL PROPERTY  
CPM 2049 06 11**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****VANDALISM LIMITATION**

This endorsement modifies insurance provided under the following:

CAUSES OF LOSS - BASIC FORM  
CAUSES OF LOSS - BROAD FORM  
CAUSES OF LOSS - SPECIAL FORM**SCHEDULE**

<b>Per-Occurrence Limit of Insurance</b>	\$ 25,000
<b>Per-Building Deductible</b>	\$ 2,500
<b>Premises Number</b>	<b>Building Number</b>
1	1

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Losses caused by "vandalism" shall be subject to a Per-Occurrence Limit and Per-Building Deductible as shown in the Schedule above.

But, if "vandalism" results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

"Vandalism" means the willful and malicious damage to, or destruction of, the described property.

- (2) Vehicles or self-propelled machines, other than autos, you hold for sale; or
- (3) Rowboats or canoes out of water at the described premises;

**p. The following property while outside of buildings:**

- (1) Grain, hay, straw or other crops;
- (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, signs (other than signs attached to buildings), trees, shrubs or plants (other than "stock" of trees, shrubs or plants), all except as provided in the Coverage Extensions.

**3. Covered Causes Of Loss**

See applicable Causes of Loss Form as shown in the Declarations.

**4. Additional Coverages**

**a. Debris Removal**

- (1) We will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) The most we will pay under this Additional Coverage is 25% of:
  - (a) The amount we pay for the direct physical loss of or damage to Covered Property; plus
  - (b) The deductible in this policy applicable to that loss or damage.

But this limitation does not apply to any additional debris removal limit provided in the Limits of Insurance section.
- (3) This Additional Coverage does not apply to costs to:
  - (a) Extract "pollutants" from land or water; or
  - (b) Remove, restore or replace polluted land or water.

**b. Preservation of Property**

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

**c. Fire Department Service Charge**

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

**d. Pollutant Clean Up and Removal**

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

**B. EXCLUSIONS AND LIMITATIONS**

**1. Tenant Damage**

This policy will not pay for damage caused by, contributed to, assisted by, or as a result of any intentional acts of vandalism, arson, violence, malicious mischief, or neglect on the part of any prior or current owner or tenant.

**2. Causes of Loss Form**

See applicable Causes of Loss Form as shown in the Declarations.

**3. Cosmetic Loss to Metal Roof Coverings Caused by Hail**

We will not pay for "cosmetic loss or damage" to "metal roof coverings" of buildings and structures caused by hail.

- (1) "Cosmetic loss or damage" means loss or damage that alters the physical appearance of the "metal roof covering" but does not result in the penetration of water through the "metal roof covering" and does not result in the failure of the "metal roof covering" to perform its intended function of keeping out the elements over an extended period of time.

- (2) "Metal roof covering" means the metal roofing material exposed to the weather, the underlayments applied for moisture protection or other purposes and all flashings.

This exclusion does not apply to loss or damage by hail to "metal roof coverings" that will allow the penetration of water through the "metal roof coverings" or that results in the failure of the "metal roof covering" to perform its intended function of keeping out the elements over an extended period of time.

#### C. LIMITS OF INSURANCE

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs attached to buildings is \$1,000 per sign in any one occurrence.

The limits applicable to the Coverage Extensions and the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.

Payments under the following Additional Coverages will not increase the applicable Limit of Insurance:

1. Preservation of Property; or
2. Debris Removal; but if:
  - a. The sum of direct physical loss or damage and debris removal expense exceeds the Limit of Insurance; or
  - b. The debris removal expense exceeds the amount payable under the 25% limitation in the Debris Removal Additional Coverage; we will pay up to an additional \$10,000 for each location in any one occurrence under the Debris Removal Additional Coverage.

#### D. DEDUCTIBLE-PER BUILDING

We will not pay for loss or damage to any Covered Property unless the amount of the loss or damage exceeds your Deductible. Your Deductible will be calculated based on a 'Per Building' basis. The amount 'Per Building' will be shown on the Declaration Page, unless otherwise noted in your policy.

#### E. LOSS CONDITIONS

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

##### 1. Abandonment

There can be no abandonment of any property to us.

#### 2. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

#### 3. Duties In The Event Of Loss Or Damage

- a. You must see that the following is done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

(7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

(8) Cooperate with us in the investigation or settlement of the claim.

b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

#### 4. Loss Payment

a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:

(1) Pay the value of lost or damaged property;

(2) Pay the cost of repairing or replacing the lost or damaged property, subject to b. below;

(3) Take all or any part of the property at an agreed or appraised value; or

(4) Repair, rebuild or replace the property with other property of like kind and quality, subject to b. below.

b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.

d. We will not pay you more than your financial interest in the Covered Property.

e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.

f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.

g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:

(1) We have reached agreement with you on the amount of loss; or

(2) An appraisal award has been made.

#### 5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

#### 6. Valuation

We will determine the value of Covered Property in the event of loss or damage as follows:

a. At actual cash value as of the time of loss or damage, except as provided in b., and c..

b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

The cost of building repairs or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property. However, the following property will be valued at the actual cash value even when attached to the building:

(1) Awnings or floor coverings;

(2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or

(3) Outdoor equipment or furniture.

c. Tenant's Improvements and Betterments at:

(1) Actual cash value of the lost or damaged property but only if you make repairs promptly.

#### d. Actual Cash Value

Actual cash value is defined as follows:

(1) when the damage to property is economically repairable, "actual cash value" means the cost of repairing the damage, less reasonable deduction for wear and tear, deterioration, and obsolescence;

(2) when the loss or damage to property creates a total loss, actual cash value means the market value of the property in a condition equal to that of the destroyed property, if reasonably available on the used market or

(3) otherwise actual cash value means the market value of new property of like kind and quality, less reasonable reduction for wear and tear, deterioration, and obsolescence.

#### F. ADDITIONAL CONDITIONS

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

**1. Coinsurance**

If a Coinsurance percentage is shown in the Declarations, the following condition applies.

- a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

- (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in step (1);
- (3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in step (2); and
- (4) Subtract the deductible from the figure determined in step (3).

We will pay the amount determined in step (4) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself. **Example No. 1 (Underinsurance):**

When:

The value of the property is	\$ 250,000
The Coinsurance percentage for it is	80%
The Limit of Insurance for it is	\$ 100,000
The Deductible is	\$ 250
The amount of loss is	\$ 40,000

Step (1):  $\$250,000 \times 80\% = \$200,000$  (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$100,000 / \$200,000 = .50$

Step (3):  $\$40,000 \times .50 = \$20,000$

Step (4):  $\$20,000 - \$250 = \$19,750$

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

**Example No. 2 (Adequate Insurance):**

When:

The value of the property is	\$ 250,000
The Coinsurance percentage for it is	80%
The Limit of Insurance for it is	\$ 200,000
The Deductible is	\$ 250
The amount of loss is	\$ 40,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ( $\$250,000 \times 80\%$ ). Therefore, the Limit of Insurance in this Example is adequate and no penalty applies. We will pay no more than \$39,750 (\$40,000 amount of loss minus the deductible of \$250).

- b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

**Example No. 3:**

When:

The value of property is:

Bldg. at Location No. 1	\$ 75,000
Bldg. at Location No. 2	\$ 100,000
Personal Property at Location No. 2	\$ 75,000
	\$ 250,000

The Coinsurance

percentage for it is 90%

The Limit of Insurance for

Buildings and Personal \$ 180,000

Property at Location

Nos. 1 and 2 is

The Deductible is \$ 1,000

The amount of loss is:

Bldg. at Location No. 2 \$ 30,000

Personal Property at \$ 20,000

Location No. 2. \$ 50,000

Step (1):  $\$250,000 \times 90\% = \$225,000$  (the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2):  $\$180,000 / \$225,000 = .80$

Step (3):  $\$50,000 \times .80 = \$40,000$ .

Step (4):  $\$40,000 - \$1,000 = \$39,000$ .

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

**2. Mortgageholders**

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
  - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;



- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
  - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
  - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:
  - (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

### 3. Utilities and Inspection Requirements

As a condition of this insurance, you are required to:

- a. Have all applicable public utilities or services activated and operational at the premises, including but not limited to electricity, gas, and water.
- b. Either directly or by use of a third party, perform physical inspections of the exterior and interior of all vacant or unoccupied property every 30 days.
- c. We will not pay for loss or damage that would have otherwise not occurred if you fail to comply with Section F. Subsection 3. a. or b.

### G. OPTIONAL COVERAGES

If shown in the Declarations, the following Optional Coverages apply separately to each item.

### 1. Replacement Cost

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Loss Condition, Valuation, of this Coverage Form.
- b. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- c. We will not pay on a replacement cost basis for any loss or damage:
  - (1) Until the lost or damaged property is actually repaired or replaced; and
  - (2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.
- d. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:
  - (1) The Limit of Insurance applicable to the lost or damaged property;
  - (2) The cost to replace, on the same premises, the lost or damaged property with other property:
    - (a) Of comparable material and quality; and
    - (b) Used for the same purpose; or
  - (3) The amount you actually spend that is necessary to repair or replace the lost or damaged property.
- f. The cost of repair or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

### H. DEFINITIONS

- 1. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 2. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

**VACANT BUILDING PROPERTY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

**A. COVERAGE**

We will pay for direct physical loss of or damage to Your Interest in the Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

**1. Covered Property**

Covered Property, as used in this Coverage Part, means the type of property described in this section, **A.1.**, and limited in **A.2.**, Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

**a. Building**, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
  - (a) Machinery and
  - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
  - (a) Fire extinguishing equipment;
  - (b) Outdoor furniture;
  - (c) Floor coverings; and
  - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:
  - (a) Additions under construction, alterations and repairs to the building or structure;
  - (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

**2. Property Not Covered**

Covered Property does not include:

- a.** Accounts, bills, currency, deeds, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;

- b.** Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c.** Automobiles held for sale;
- d.** Bridges, roadways, walks, patios or other paved surfaces;
- e.** Contraband, or property in the course of illegal transportation or trade;
- f.** The cost of excavations, grading, backfilling or filling;
- g.** Foundations of buildings, structures, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- h.** Land (including land on which the property is located), water, growing crops or lawns;
- i.** Personal property while airborne or waterborne;
- j.** Bulkheads, pilings, piers, wharves or docks;
- k.** Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l.** Retaining walls that are not part of a building;
- m.** Underground pipes, flues or drains;
- n.** The cost to research, replace or restore the information on valuable papers and records, including those which exist on electronic or magnetic media, except as provided in the Coverage Extensions;
- o.** Vehicles or self-propelled machines (including aircraft or watercraft) that:
  - (1) Are licensed for use on public roads; or
  - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

  - (1) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;